

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 558 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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BHIMJIBHAI BECHARBHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

MR G RAMAKRISHNAN for Petitioner
MR KT DAVE, ASSISTANT GOVERNMENT PLEADER for
Respondent No.1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Rajkot passed an order
on September 2, 1999 in exercise of powers under Section
3(1) of the PASA Act detaining Bhimjibhai Becharbhai Koli

of Village Leelapar of Morbi Taluka, District Rajkot under the provisions of the said Act. The detenu sent an application through jail authorities to this court which has been treated as a petition under Article 226 of

the Constitution of India. Since the detenu was not represented by any advocate, legal aid was ordered to be provided and learned advocate, Mr. Ramakrishnan came to be appointed as such. When the matter is called out, he is not present. However, learned AGP Mr. Dave has, placed on record, copies of compilation of papers furnished to the detenu at the time of the detention.

2. A perusal of the compilation indicates that the detaining authority took into consideration 6 offences registered against the detenu. The authority also considered statements of 4 witnesses in respect of whom the detaining authority exercised powers under section 9(2) of the PASA Act. On being satisfied about the correctness and genuineness of the fear expressed by the witnesses qua the detenu and after considering the possibility of resorting to less drastic remedies, the detaining authority passed the impugned order observing that detention under PASA was the only efficacious remedy that could be resorted to in order to immediately prevent the petitioner from pursuing his illegal and anti social activities.

3. It transpires that the detaining authority has exercised the powers by claiming privilege under Section 9(2) of the PASA Act on the basis of the statements of anonymous witnesses recorded by the proposing authority. The detaining authority has not undertaken the exercise

of verifying and satisfying itself about the correctness and genuineness of the fear expressed by the witnesses. Such powers are required to be exercised only in public interest and the authority has to strike a balance between public interest on one hand and the right of the detenu of making an effective representation on the other. A perusal of the statements also indicates that the detaining authority has not verified the statements at all. In this view of the matter, exercising powers under Section 9(2) of the PASA Act cannot be said to be proper. This would vitiate the order of detention as it affects the right of the detenu of making an effective

representation. The petition, therefore, deserves to be allowed on this ground alone.

4. The petition is allowed. The order of detention is quashed, hence set aside. The detenu Bhimjibhai Becharbhai Koli be set at liberty forthwith, if not required in any other case. Rule made absolute. No costs.

(A.L. Dave, J.)

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